BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RUBEN M. URBANO	)	
Claimant	)	
	)	
VS.	)	Docket Nos. 1,008,817 &
	)	1,008,818
KOCH-GLITSCH, L.P.	)	
Self-Insured Respondent	)	

ORDER

Respondent requested review of the September 3, 2004 Award by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on February 15, 2005.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared for the claimant. Douglas C. Hobbs of Wichita, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument before the Board, the parties agreed that the stipulated value of claimant's additional compensation was $158.37 instead of the $158.38 listed in the ALJ's Award.

ISSUES

In Docket No. 1,008,817, the claimant alleged repetitive injuries to his bilateral upper extremities beginning November 2002 and each workday through June 18, 2003. In Docket No. 1,008,818, the claimant alleged repetitive injuries to his bilateral lower extremities beginning July 7, 2001 and each and every workday through June 18, 2003. The claims were consolidated for hearing.

The Administrative Law Judge (ALJ) determined the claimant suffered injuries to his bilateral upper and lower extremities on June 18, 2003, which arose out of and in the

course of employment. The ALJ further found the claimant suffered a 84 percent work disability based on a 94 percent task loss and a 74 percent wage loss.[1]

The respondent requests review of whether the claimant's accidental injuries arose out of and in the course of employment as well as the nature and extent of disability. Respondent argues the claimant failed to sustain his burden of proof that the accidental injuries arose out of and in the course of employment and therefore benefits should be denied. Respondent further argues the evidence does not support a causal connection between claimant's work duties and his lower extremity condition. In the alternative, if it is determined that claimant's injuries are compensable, the respondent argues claimant should be imputed a wage because he did not make a good faith effort to find employment and is entitled to a work disability in the range of 12-16 percent.

Claimant argues he should have been awarded a functional impairment in one of the docketed claims and a work disability in the other. But claimant did not specify which injury he claimed should be awarded a functional impairment and which injury should be awarded a work disability. Claimant further argues that he is entitled to a work disability and requests the Board affirm the ALJ's determination he suffered an 84 percent work disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

In October 1976, Ruben M. Urbano began working for the respondent as a machinist. He primarily operated shear machines which the claimant described as a machines used to cut metal plates. Claimant's job duties required him to stand at the machines that he operated and to lift, pull, turn and twist due to the arrangement of the assembly line. He had been using a floor mat to stand on at his machine for the past seven years.

In July 2001, the claimant's third shift hours were changed to 8:30 p.m. to 7 a.m., 4 days a week from his previous third shift hours of 12 p.m. to 7 a.m., 5 days a week. Claimant began having pain in the bottom of both feet as he worked the longer daily hours of his new work shift. After standing for eight hours, the pain would increase. Claimant testified that he was having minor symptoms before his work hours had increased but as

[1] In order to arrive at a 94 percent task loss opinion, the ALJ averaged the two task loss opinions provided by Dr. Murati. The doctor provided a 100 percent task loss attributable to claimant's lower extremity injuries and an 88 percent task loss attributable to claimant's upper extremity injuries.

he stood more than eight hours his foot pain became much more severe. Claimant described the pain as tingling on the outsides of his feet and he would run cold water over them in order to relieve the pain.

At respondent's insurance carrier's request, the claimant was examined on October 24, 2001, by Dr. John F. McMaster, board certified in family practice and emergency medicine. The doctor diagnosed claimant with nonspecific, non-differentiated bilateral foot pain which he opined was non-occupational. However, the doctor further recommended claimant be referred to a foot specialist for appropriate orthotics to enable claimant to stay on his feet for longer time periods. And although claimant was not provided restrictions the doctor recommended that claimant be allowed a trial period to not wear the company prescribed footwear in order to see if his symptoms improved.

It appears from the medical records that claimant then sought treatment on his own from his personal physician and was provided orthotics to wear in athletic shoes instead of the company prescribed steel toe work boots. Claimant was also provided anti-inflammatory medications.

The claimant's foot pain persisted and he sought treatment with Dr. John W. Fanning, a board certified orthopedic surgeon who specializes in ankle and foot injuries. Dr. Fanning examined the claimant on October 3, 2002. Claimant complained of a one year history of bilateral foot pain and numbness. The claimant noted he worked on his feet on hard floors and his symptoms started as his hours worked increased. X-rays were unremarkable. Dr. Fanning diagnosed the claimant with chronic foot pain and numbness. Because the claimant's symptoms were suggestive of tarsal tunnel, the doctor recommended an EMG and nerve conduction studies and provided temporary restrictions confining claimant to a sit down job.

The EMG performed October 25, 2002, indicated the claimant had mild bilateral tarsal tunnel syndrome, the left worse than the right, and indicated claimant also had metatarsalgia and plantar fasciitis. On November 7, 2002, Dr. Fanning performed a physical examination and noted the claimant did not have any swelling, the arches were symmetrical and he had some dysesthetic pain into his forefoot with compression of the tarsal tunnel. Dysesthetic pain is either a sharp pain, tingling, numbness or burning. Dr. Fanning recommended the claimant's activity be modified with a maximum of six hours of standing per shift and that he return in one month. He also recommended inserts or orthotics to be placed in claimant's shoes and worn for periods of prolonged standing.

On December 10, 2002, the claimant still had tarsal tunnel dysesthetic pain with compression of the tarsal tunnel. So the doctor recommended that claimant continue to use the supportive shoes and inserts, work six to seven hours standing per day as tolerated and return in six weeks for a follow-up. The claimant returned for a follow-up visit on January 21, 2003, complaining of worsening symptoms after standing longer than six

hours. The doctor diagnosed bilateral tarsal tunnel syndrome. The doctor discussed the possibility of performing surgery but the claimant indicated that his symptoms were not bad enough to warrant surgery, especially since the doctor could not guarantee a complete recovery. Dr. Fanning did not impose permanent restrictions nor offer an opinion regarding functional impairment. Dr. Fanning concluded the only treatment options were activity modification, supportive shoes, and orthotic inserts. And the doctor referred claimant back to Dr. McMaster to finalize any permanent restrictions. However, Dr. Fanning sent a letter to Dr. McMaster indicating that claimant needed permanent standing restrictions. Dr. Fanning noted: "I think he could be released, but I think he is going to need a permanent standing restriction."[2]

Dr. Fanning noted that although a negative EMG/NCT does not necessarily mean someone does not have tarsal tunnel, a positive test is usually indicative that they do have tarsal tunnel. And Dr. Fanning concluded the electrodiagnostic findings confirmed his findings upon physical examination of the claimant. Dr. Fanning noted that if claimant worked eight hours and had increasing symptoms, it would indicate claimant might be suffering more nerve damage and would need more restrictions. The doctor testified:

> Q. In terms of causing more damage, more harm, more change in the body structure, is there any reason he can't work up to eight hours a day standing on his feet?
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> A. Well I guess I really can't answer that. We try to use symptoms as a way to gauge any ongoing damage or dysfunction. So I would answer that by saying if he worked eight hours a day and had increasing symptoms, that would lea[d] me to believe there was maybe more damage to the nerve and that would need to be restricted more.[3]

Finally, Dr. Fanning stated that he did not formulate an opinion whether claimant had an impairment of function as a result of his employment with respondent. But when the doctor referred claimant back to Dr. McMaster he offered, if requested, to not only determine permanent restrictions for claimant but also an impairment rating.[4]

The claimant returned to see Dr. McMaster on November 13, 2002, and the doctor imposed temporary restrictions of limited standing and walking of no more than six hours in the ten-hour workday. On November 19, 2002, the claimant again saw Dr. McMaster and discussed Dr. Fanning's findings. A referral was made to a local orthotic specialist to

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[2] Fanning Depo., Ex. 2.

[3] *Id.* at 16.

[4] *Id.*, Ex. 2.

create some type of inserts to alleviate the foot pain. Dr. McMaster continued the previous temporary work restrictions which he continued on subsequent appointments with claimant through July 9, 2003, which was the last time the doctor saw the claimant to provide treatment.[5]

At respondent's attorney's request, the claimant was seen again by Dr. McMaster on June 1, 2004. At this time, the doctor diagnosed the claimant as having a nonspecific, non-differentiated bilateral foot pain and assigned claimant a 3 percent permanent partial impairment rating to the lower extremities for subjective pain complaints based on the AMA *Guides*[6].

Dr. McMaster opined the claimant had reached maximum medical improvement and did not need permanent restrictions or job modifications. The doctor opined the claimant would not suffer any additional injury or pathology to his feet if he were on his feet for an indefinite period of time. The doctor further concluded claimant's foot pain was a tolerance issue and restrictions would be ill advised. The doctor also testified he found "no specific objective findings with respect to his lower extremities or feet as the causation for his subjective complaint of foot pain."[7] Stated another way, the doctor did not think there was any specific medical diagnosis to apply to claimant's condition. Using the task list prepared by Steve Benjamin, the doctor opined the claimant is capable of performing all of the job tasks listed.

Dr. McMaster could not find a cause for claimant's lower extremity condition. But the doctor did opine that claimant's conditions were not due to his work for respondent. And the fact that claimant noted the foot pain started when he began working a 12-hour shift did not imply any cause and effect relationship to the doctor.

At the same time claimant was receiving treatment for his feet, he began to experience symptoms in his hands. In November 2002, the claimant was pulling and bending trays weighing 30-40 pounds when he began having pain, tingling and swelling in his hands. The production line would produce 40-60 trays an hour.

The claimant's hand problems persisted and on June 17, 2003, the claimant saw Dr. J. Mark Melhorn, a board certified orthopedic surgeon. The claimant was complaining of bilateral hand pain with tingling and numbness in his fingers. Dr. Melhorn diagnosed the

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[5] It appears that Dr. McMaster changed jobs shortly after this time and that is why he no longer provided treatment for claimant.

[6] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

[7] McMaster Depo. at 16.

claimant with complaints of weakness, painful right and left hand, neuropraxia or altered sensation or feeling. The doctor recommended claimant modify his work environment such that he consider task rotation and light medium work. Because Dr. Melhorn placed restrictions on the claimant he was taken off work the next day. The last day claimant worked was June 18, 2003, since respondent could no longer accommodate the claimant's restrictions.

A nerve conduction study was performed by Dr. Dilawer Abbas on July 1, 2003, which revealed normal bilateral upper extremities. On July 7, 2003, the claimant returned and Dr. Melhorn reviewed the nerve test with him. Claimant was still having problems with both wrists even though he was not working at the time. Upon examination on July 31, 2003, the doctor determined that the medical management provided to claimant did not result in any improvements. The doctor was unable to identify and document carpal tunnel because the clinical examination and nerve conduction study did not show carpal tunnel. Dr. Melhorn also noted that the lack of work did not have any impact or change with regard to the claimant's complaints. The doctor stated:

> The causation is probably multi-factorial and involved age, gender and genetic or inherited characteristics. It is possible that his work activities may have contributed and/or aggravated those symptoms with regard to the upper extremities, although clinically, he lacks a specific pathognomonic etiology diagnosis.[8]

Based upon subjective complaints, Dr. Melhorn opined the claimant has a 1.5 percent impairment to the right and left hand which converts to a 2 percent whole person impairment. Dr. Melhorn restricted the claimant's work to include task rotation. Dr. Melhorn opined the claimant is not capable of performing 2 out of the task list prepared by Steve Benjamin. Finally the doctor testified:

> Q. Do you have an opinion as to whether his ongoing pain complaints that you -- that he had when you last saw him were connected to his work at Koch-Glitch?
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> A. If you take the basic assumption that the job is the cause, then performing the activity should cause the discomfort. If the job is the cause and the cause is removed, and the individual is no longer performing the job, then one would expect resolution of the symptoms, or at least an improvement. So in this case, when the individual is no longer doing the job, and had also received medical management and intervention, if the job is the cause, you would have expected to see an improvement in the condition. It did not occur.
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> Q. So what conclusion can you draw from that?

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[8] Melhorn Depo. at 12-13.

> A. That this is an individual who is at risk for musculoskeletal pain, that his job activities may represent an aggravation or possible trigger, but is not the sole cause for why the individual continues to have the pain and discomfort.
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> Q. Could you, to a reasonable degree of medical probability, relate his continued pain after the cessation of work activities to his job at Koch-Glitch?
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> A. It would be difficult.[9]

Dr. Pedro A. Murati is board certified in physical medicine and rehabilitation, electrodiagnosis and independent medical evaluations. At claimant's attorney's request, Dr. Murati examined claimant and prepared a report on March 4, 2003. The doctor diagnosed claimant with bilateral carpal tunnel syndrome, bilateral plantar fasciitis and metarsalgia on the right second and third metatarsals and the second, third and fourth metatarsals on the left. The doctor made treatment recommendations, placed restrictions on claimant and opined the diagnosed conditions were all caused by claimant's work activities with respondent.

At claimant's attorney's request, Dr. Murati examined claimant a second time on August 28, 2003. Upon physical examination, Dr. Murati again diagnosed the claimant with bilateral carpal tunnel syndrome, bilateral plantar fasciitis, metatarsalgia of the right second and third metatarsals, and the left second, third and fourth metatarsals. And he opined the claimant's injuries were due to his work-related injuries that occurred on or about July 2001 and November 2002 and each day worked thereafter. Dr. Murati placed permanent restrictions based on an 8-hour work day of no climbing stairs or ladders, no squatting, crawling, driving a manual transmission, no repetitive foot controls on the left, no heavy grasping with both hands, no lifting, carrying, pushing or pulling greater than 20 pounds, rarely stand and walk, occasional repetitive grasping or grabbing with both hands, occasional lifting, carrying, pushing, or pulling of 20 pounds, frequent repetitive hand controls with both hands, frequent lifting, carrying, pushing, or pulling of 10 pounds, use wrist splints while working and at home, no use of hooks or knives, no use of vibratory tools with both hands, and no lifting below knuckle height.

Based on the AMA *Guides*, Dr. Murati rated the claimant's bilateral carpal tunnel syndrome in both upper extremities at 10 percent each which converts to a 6 percent whole person impairment per an extremity. These upper extremity impairments result in a 12 percent whole person impairment. Dr. Murati also rated the claimant's combined right lower extremity impairments for a 9 percent impairment or a 4 percent whole person and the left lower extremity impairments combined for an 11 percent impairment or a 4 percent whole person. These lower extremity whole person impairments combine for an 8 percent

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[9] *Id.* at 32-34.

impairment. Using the Combined Value Charts, the whole person impairments result in a 19 percent whole person impairment.

On cross-examination, the doctor elaborated that claimant should not stand more than two or three minutes out of an eight hour day. But further clarified that what he was trying to say was claimant needed a sit-down job. Dr. Murati reviewed the task list prepared by Doug Lindahl, claimant's vocational expert, and concluded claimant could still perform one of eight tasks considering only the restrictions as a result of his upper extremity injuries. Dr. Murati further concluded claimant could not perform any of the eight tasks considering the restrictions for claimant's lower extremity injuries.

Dr. Greg A. Horton is board certified orthopedic surgeon and holds the title of Associate Professor of Orthopedic Surgery at the University of Kansas Medical Center. Dr. Horton limits his practice to the lower extremities. At respondent's attorney's request, Dr. Horton performed a physical examination of claimant, reviewed medical records, and took claimant's history on May 20, 2003. The claimant was complaining of bilateral foot pain due to increased standing during his longer shift. The doctor diagnosed the claimant as having bilateral chronic foot discomfort and that electromyographic studies were suggestive of mild tarsal tunnel syndrome.

After examining the claimant the doctor noted in his report in pertinent part:

> If one assumes that the increased standing requirements of his occupation substantially contribute to his symptoms, then this does seem to have merit based on the temporal relationship of his symptoms. However, I think that the aggravation caused by this is temporary and assuming that his decreased standing tolerance can be accommodated, then I do not see any basis for permanent impairment. I will would [sic] concur with Dr. Fanning that he would be capable of standing for six hours per day. I think this would be a permanent restriction now.[10]

Dr. Horton opined the claimant did not have any permanent impairment to his feet. The doctor said,

> I don't have any thing that would make me think that his underlying foot problems are in any way related to any type of an occupational type of a problem. There's nothing specific with regard to his job that would make the diagnosis of plantar fasciitis or sore feet anymore common than it would for the general population.[11]

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[10] Horton Depo., Ex. 2.

[11] *Id.* at 11.

But the doctor did agree that claimant's symptoms increased when he went to the 11-hour shift and this was a temporary exacerbation of his underlying problem. Dr. Horton agreed with Dr. Fanning's restrictions that claimant was capable of standing 6-8 hours a day. Dr. Horton opined the claimant was capable of performing all of the tasks which Mr. Steve Benjamin prepared as long as the tasks do not require repetitive foot pedal operation. Based on Mr. Doug Lindahl's task list, the doctor opined the claimant would be able to perform those tasks as long as he wasn't standing longer than 6-8 hours. Dr. Horton testified the claimant would be able to perform his previous job where he stood for 8 hours a day. The doctor noted that claimant's standing restrictions were limited by his subjective complaints.

Dr. Horton agreed there was a temporal relationship between claimant's increased symptoms and increased standing at work. Dr. Horton testified:

> Q. And the last paragraph of your report, Deposition Exhibit No. 2, in the first sentence you wrote:
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> If one assumes that the increased standing requirements of his occupation substantially contribute to his symptoms, then this does seem to have merit based on the temporal relationship of his symptoms.
>
> Is that what you were indicating?
>
> A. That's what it reads and that continues to be my opinion.
>
> Q. So the increased standing that he was doing in his work was what caused the increase in symptoms in his feet?
>
> A. The increased standing caused an increase in his symptoms and when he stood less his symptoms basically acquiesced.[12]

The doctor went on to note that the aggravation caused by standing was temporary while at the same time adopting Dr. Fanning's restrictions that claimant stand no more than six hours a day.[13]

The claimant has a ten and a half grade education. Claimant testified he is still having problems with his hands. He does not have any grip strength to hold small objects. Claimant testified that he is not able to stand or walk longer than 35-40 minutes before he has to sit down due to his feet becoming tender. Claimant's job search included contacting seven liquor stores for a driver or part-time driver position and checking the newspaper

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[12] *Id*. at 18.

[13] *Id*., Depo. Ex. 2.

twice a month. He also called a couple of rental businesses, Ryder and U-haul. It appears that claimant obtained a job as a part time school bus driver in April 2004 through the conclusion of the school year in June 2004. Claimant was paid $9.25 an hour.[14]

Mr. Doug Lindahl, a vocational rehabilitation counselor, interviewed the claimant and prepared a list of tasks and the physical requirements for jobs claimant had performed in the 15 years prior to claimant's injury. Mr. Lindahl testified that based on claimant's education, work history, permanent physical restrictions and job skills he would be able to earn from minimum wage to $6 an hour.

At respondent's attorney's request, Mr. Steven Benjamin, a vocational counselor, performed a work disability assessment on the claimant which included preparation of a list of the job tasks claimant had performed in the 15 years before his accidents. A narrative report was prepared on January 9, 2004. Mr. Benjamin opined the claimant was capable of earning $374 per week if Dr. Murati's restrictions were used. Mr. Benjamin further opined claimant had the ability to earn $631.80 a week which was an average of the high and low wage figures for the prospective jobs he felt were available to claimant as a bench grinder, bench assembler, bench press operator and multi operation machine operator. Finally, Mr. Benjamin opined that the jobs claimant had looked into at liquor stores would require that he be on his feet in violation of his standing restrictions.

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.[15] "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."[16]

Medical evidence is not essential to the establishment of the existence, nature and extent of an injured worker's disability.[17] The claimant's testimony alone is sufficient evidence of his physical condition.[18] Furthermore, the finder of fact is free to consider all the evidence and decide for itself the percentage of disability.[19]

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[14] Stipulation dated July 26, 2004.

[15] K.S.A. 44-501(a).

[16] K.S.A. 2003 Supp. 44-508(g).

[17] *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

[18] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

[19] *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

The Board is mindful of Dr. Horton's opinion that claimant's work for respondent merely resulted in a temporary exacerbation of his chronic foot pain. However, the doctor also assigned permanent standing restrictions and further qualified his opinion that claimant's work resulted in a temporary exacerbation by noting the condition would be temporary assuming claimant's restrictions could be accommodated. Clearly, the standing restrictions could not be accommodated and more significantly the claimant described increased pain with standing for fewer than six hours. It also seems somewhat inconsistent for Dr. McMaster to conclude there was no occupational connection to claimant's foot complaints while at the same time restricting the time claimant could stand at work and providing an impairment rating for claimant's pain complaints.

Dr. Fanning diagnosed claimant with mild tarsal tunnel syndrome and noted the onset of complaints with claimant's longer work hours. Dr. Murati concluded claimant's standing at work caused his foot condition. Finally, the contemporaneous medical records support claimant's history that it was not until he began to work longer hours for respondent that his foot pain became intolerable. In summation, the Board concludes the claimant's testimony coupled with Drs. Fanning and McMaster's treatment records and Dr. Horton's equivocal testimony regarding whether the exacerbation at work was temporary as well as Dr. Murati's causation opinion combine to meet claimant's burden of proof that his feet were injured as a result of his work activities.

Turning to the claimed repetitive injuries to the bilateral upper extremities, the claimant detailed the repetitive upper extremity activities at work which led to his complaints of pain. Dr. Murati diagnosed bilateral carpal tunnel syndrome caused by claimant's work activities. Dr. Melhorn could not document carpal tunnel based upon the normal diagnostic studies but did note claimant's work activities may have contributed to claimant's symptoms. Dr. Melhorn further provided claimant with restrictions and provided an impairment rating based upon claimant's subjective pain complaints. The Board concludes that claimant's testimony coupled with Dr. Murati's causation opinion is more persuasive than Dr. Melhorn's equivocal opinion that work may have contributed or aggravated claimant's bilateral upper extremities.

The Board affirms the ALJ's determination that as a result of his repetitive work activities claimant suffered injury to his bilateral upper and lower extremities on June 18, 2003. The ALJ considered claimant's bilateral upper extremity and lower extremity injuries as occurring in one accident and entered one award. The Board agrees and likewise enters one award for the consolidated cases.

It is well settled that an injured employee must make a good faith effort to return to work within their capabilities in order to be entitled to work disability under K.S.A. 44-

510e(a).[20] If it is determined that a good faith effort has not been made, then an appropriate post-injury wage will be imputed based on all the evidence, including expert testimony concerning the capacity to earn wages.[21]

Claimant's job search included inquiring about jobs at seven liquor stores and checking the newspaper twice a month. He also called a couple of rental businesses, Ryder and U-haul. Although claimant did obtain part-time employment driving a school bus, that job only lasted a few weeks until the end of the school year. Upon a review of the entire evidentiary record, it cannot be stated that claimant engaged in a good faith job search and a wage will be imputed to claimant.

The vocational experts provided opinions which indicated claimant was capable of earning in a range from $206 to $631 a week. The claimant demonstrated the ability to earn $9.25 an hour for driving the school bus. Consequently, the Board will impute that wage which results in a $370 gross average weekly wage. When compared to claimant's stipulated gross average weekly wage of $828.37 it is determined claimant suffers a 55 percent wage loss. Consequently, the ALJ's Award is modified to reflect claimant has suffered a 55 percent wage loss.

Because the bilateral lower and upper extremity injuries occurred in one accident the task loss opinion should reflect claimant's total task loss resulting from that accident. Instead of averaging Dr. Murati's 100 percent task loss attributable to claimant's lower extremity injuries with his 88 percent task loss attributable to claimant's upper extremity injuries the Board adopts Dr. Murati's 100 percent task loss opinion. Accordingly, the Board modifies the ALJ's award to reflect claimant has a 77.5 percent work disability.

AWARD

WHEREFORE, it is the finding of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated September 3, 2004, is modified to reflect claimant has sufered a 77.5 percent work disability and affirmed in all other respects.

The claimant is entitled to 6.14 weeks of temporary total disability compensation at the rate of $432 per week or $2,652.48 followed by permanent partial disability compensation at the rate of $432 per week not to exceed $100,000 for a 77.5 percent work disability.

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[20] *Oliver v. Boeing Co.*, 26 Kan. App. 2d 74, 977 P.2d 288, *rev. denied* 267 Kan. 889 (1999).

[21] *Copeland v. Johnson Group, Inc.*, 26 Kan. App. 2d 803, 995 P.2d 369 (1999), *rev. denied* 269 Kan. 931 (2000).

As of March 31, 2005, there would be due and owing to the claimant 6.14 weeks of temporary total disability compensation at the rate of $432 per week in the sum of $2,652.48 plus 87 weeks of permanent partial disability compensation at the rate of $432 per week in the sum of $37,584 for a total due and owing of $40,236.48, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of $59,763.52 shall be paid at the rate of $432 per week until fully paid or until further order from the Director.

IT IS SO ORDERED.

Dated this _____ day of March 2005.

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BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director